

NATIONAL DEFENSE UNIVERSITY

NATIONAL WAR COLLEGE

THE FBI REORGANIZATION: REDESIGN BY COMMITTEE

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5603 – THE NATIONAL SECURITY STRATEGY PROCESS

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Introduction

In the wake of the 9/11 terrorist attacks, the FBI is in the midst of a reorganization that reflects a profound shift in the FBI's mission priorities. Historically the FBI has investigated violations of federal law, reacting after the crime was committed and viewing successful prosecutions as one of the key benchmarks of success. While the FBI has long discharged its foreign counterintelligence mission, this role was limited and often viewed through a law enforcement and case specific prism.¹ The FBI reorganization is geared toward changing the way the agency does its business, increasing the emphasis on looking ahead and around corners, divining trends or threats through better analysis of intelligence, in order to prevent another terror attack.² The FBI has undergone previous reorganizations, and major changes were on the horizon even without 9/11, but no reorganization has been so sweeping nor has any been initiated with the intent of so clearly refocusing the priorities of the FBI.

The FBI is now focused on preventing terror attacks against the United States and the reorganization reflects the undisputed importance of this mission. Successful prosecution is now viewed as a means to the end of preventing terror attacks as opposed to an end unto itself. How Director Mueller and other senior officials determined the FBI post 9/11 reorganization plan reflects, not surprisingly, the interplay of people, organizations, and processes. Specifically, Director Mueller and senior FBI officials developed the reorganization plan from internal reviews lead by senior FBI managers, inputs from outside commissions and agencies, an acknowledged change in the threat environment, and Congressional oversight. Sadly, though not surprisingly, the FBI was moving toward a transformation but lacked both the resources and zeal in its own remaking. Coupled with the absence of comprehensive national strategy regarding terrorism, the tragedy of 9/11 was not averted.

Internal Reviews: FBI Strategic Plan 1998 – 2003 and MAXCAP05

In May of 1998 FBI Director Louis Freeh put forth the FBI Strategic Plan, 1998 – 2003. This plan represented the culmination of a year long strategic planning effort headed up by Deputy Director (DD) Robert Bryant. The top strategic priority of this plan was National and Economic Security, and the first two goals under this priority were the identification, prevention, and defeat of intelligence operations and the prevention, disruption, and defeat of terrorist operations before they occur.³ In arriving at the priorities and goals of this plan, Director Freeh and Deputy Director Bryant realized the U.S. faced an increasingly dangerous threat and were making efforts to reshape the FBI to confront it.⁴

In order to achieve these goals, Director Freeh requested funding for information technology in March 1999 that would better enable the FBI to analyze and disseminate the information it retained, as “every program manager acknowledged that FBI intelligence analysis capabilities, across all investigative and national security programs, were deficient.” Director Freeh also noted that the FBI lacked mechanisms to share information within the FBI across different programs and outside the FBI with other law enforcement and intelligence agencies.⁵

In November of 1999, the FBI announced a reorganization in which the Counterterrorism and Investigative Services Divisions (ISD) were created. The creation of these divisions was described as a “sea change” by DD Bryant, which were aimed at increasing the intelligence analysis capability of the FBI, housed within ISD, and underscoring the importance of counterterrorism. DD Bryant stated the FBI collected a lot of information but suffered from inadequate “predictive intelligence”.⁶ Within the Strategic Plan published in 1998 then, were acknowledgements in clear terms that the United States and the FBI were confronting a threat

that required a different approach and that the FBI lacked the analytical capacity and information technology by which to efficiently distill and disseminate what information it had.

Building on the Strategic Plan ushered to fruition by DD Bryant, in March of 2000 Assistant Director Dale Watson initiated an internal counter terrorism planning process entitled MAXCAP 05. This 5-year plan was based on the premise that the FBI would never be able to stop all acts of terrorism directed against U.S. interests, but it must work to build a maximum feasible capacity. FBI resources are finite, and the methods in which terrorists can strike are near limitless. Accordingly, MAXCAP 05 sought to ensure that each field office was working to its fullest capacity to address terrorism threats in the U.S.⁷ FBI field offices were evaluated, and the Special Agents in Charge were rated, in part on their ability to fully identify, prevent and defeat the threat and ensure adequate resource needs were identified for this effort. The shortfalls identified through the MAXCAP 05 program such as translators, surveillance teams, analysts, access to investigative databases, or agents, formed the basis for FBI budget requests to Congress for counterterrorism programs. In the late spring of 2001, FBI field offices had recently completed this survey measuring their capacity to combat terror, and almost every major field office reported itself undermanned and unable to address the terrorism threat. An FBI request for funding to start closing this gap was turned down in September 2001⁸

Director Freeh, DD Bryant, and AD Watson were aware of specific deficiencies that hampered the FBI's ability to address the terrorism threat. These deficiencies were briefed to members of Congress and a plan for corrective action initiated. Properly identifying weaknesses and setting a new strategic direction for the FBI and getting such a large organization headed that way are two different matters.

One significant factor that prevented a faster transition was the FBI organizational culture, which accentuated criminal investigative approaches and was uncomfortable with the imprecise nature of strategic analysis. Sometimes referred to as a case-file mentality, or a preoccupation with narrowly defined investigative matters, the FBI culture contributed to decentralized operations by the field offices as each office was primarily concerned with events in its territories and cases as opposed to a broader picture.⁹ To compound the problem, senior counterterrorism officials faced resistance for additional resources both inside and outside the FBI as criminal problems unfolded regularly compared to a terror threat that was widely considered an overseas problem.¹⁰ On 9/11 it became clear that the transition was not fast enough. Director Mueller, however, was provided a direction in which to take the FBI, which emphasized collaboration, information sharing, comprehensive analysis, and includes vastly upgraded information management technologies. What Director Mueller has that Director Freeh did not is the immense impetus for change and resource support due to a catastrophic attack on the homeland.

Independent Commissions and Agencies: National Commission on Terrorism, Webster Commission, Central Intelligence Agency

In its Congressionally mandated evaluation of the nation's counter terrorism efforts, the National Commission on Terrorism reported in 2000 that although American strategies were basically on the right path, significant deficiencies regarding implementation of these strategies existed and recommendations were offered. Not surprisingly, one of the recommendations of the Commission was to increase funding to close the technology gap that threatened the ability of the FBI to collect and exploit all the terrorism intelligence to which it had access.¹¹ Closely related, the creation of a cadre of reports officers to analyze and disseminate intelligence was

recommended. A frightfully accurate recommendation called for the Attorney General to ensure that Foreign Intelligence Surveillance Act (FISA) authority was fully exercised as use of this authority was judged to be “cumbersome and overly cautious”.¹²

Finally, the Commission identified the Attorney General Guidelines, which govern FBI investigations as contributors to “bureaucratic and cultural obstacles” that prevent efficient collection of terrorism information. In addition to the now well recognized information technology problems at the FBI, the National Commission on Terrorism underscored another problem that Director Mueller would have to address in his reorganization efforts: a bureaucratic obstacle course levied on the FBI by confusing Attorney General guidelines and an overly cautious and cumbersome FISA process.¹³ The timidity and drag created by these problems, especially with regard to information sharing, cannot be overstated. In his testimony to the 9/11 Joint Inquiry, Special Agent in Charge Michael Rolince, head of the Washington D.C. field office counterterrorism program and previously head of the International Terrorism Operations Section at FBIHQ, testified that one counterterrorism field supervisor had remarked that “walls intended to separate intelligence from criminal investigations had become a maze” making the efficient passage of information extremely difficult.¹⁴ Post 9/11, this deficiency noted by the National Commission on Terrorism was addressed by passage of the Patriot Act and revisions of the Attorney General Guidelines, which were announced on May 30, 2002.¹⁵

The Hanssen espionage matter prompted the creation of the Webster Commission to determine the lapses within the Bureau and recommend improvements. While not a terrorism matter, the Hanssen case and actions recommended by the Webster Commission have become part of a broader FBI reorganization as both Hanssen and 9/11 pertain to national security and through virtue of the timing of 9/11 and the publishing of the commission’s report. Generally,

the Webster Commission determined that the FBI lacked an integrated security system and instead relied on a mosaic of Presidential Decision Directives, Executive Orders, internal Bureau practices, and other mandates. With the input of this Commission, Director Mueller established a stand-alone security division headed up by an experienced CIA security officer who is tasked with implementing a comprehensive security action plan.¹⁶ Components of this plan include the creation of an FBI career security program, regular use of polygraph examinations for personnel involved in sensitive investigations, improvements in the FBI police, and it requires the FBI to report to Congress on progress regarding computer security enhancements.¹⁷

A broader issue considered by the Webster Commission was whether or not the FBI can function as both a law enforcement and intelligence agency given the divergent cultures in each functional area as they pertain to information security.¹⁸ While Director Mueller formulated concrete actions from input of the Webster Commission in the reorganization, the commission may have also aided Director Mueller in a more fundamental way. With regard to the divergent culture issue, the Commission reported that the criminal and intelligence programs would never co-exist in the FBI “unless the Bureau gives its intelligence programs the same resources and respect it gives criminal investigations”.¹⁹

FBI-CIA interaction is a topic of much debate and the failures of each agency to cooperate with the other are well documented. The rivalry between the turf conscious agencies has arguably taken on mythic proportions and this notion is not without cause.²⁰ The growing interdependence and cooperation of the two agencies, however, should not be overlooked. The assistance, analytical and other, the CIA has provided the FBI cannot be overstated and has undoubtedly contributed to Director Mueller’s reorganization plan.²¹ The FBI and CIA have exchanged liaison officers for several decades beginning in the 1940’s.²² It was not until 1996,

however, that the FBI and CIA began liaison exchanges in the counter terrorism field. According to Dale Watson, the first FBI counter terrorism official to serve at CIA, this program has contributed enormously to the collection, analysis, and sharing of intelligence. And in the aftermath of 9/11, the number of exchanges grew significantly.²³

Additionally, Director Mueller now gives the President a daily briefing regarding domestic terrorism threats, in the same vein as CIA Director Tenet's daily briefs regarding developments overseas.²⁴ The briefing team that prepares the FBI Presidential brief is comprised of a number of CIA officers who have installed at the FBI a program similar to the one used by the CIA. The FBI Office of Intelligence, whose senior managers are CIA officers, is yet another example of the increased interaction of the two agencies and of the influence, intentional or unintentional, the CIA has in shaping the reorganization of the FBI.²⁵

The National Commission on Terrorism, the Webster Commission, and the CIA all have contributed to the reorganization plan implemented by Director Mueller by either revealing deficiencies, accentuating known shortcomings, or providing direct support to the FBI as the capabilities needed did not exist. The degree to which the FBI and CIA are cooperating is a reflection of the growing convergence of goals, cultures, powers, and beliefs of the two agencies. Prevention, the value of all source analysis and predictive intelligence, assignment of CIA officers to domestic FBI offices and more FBI Legal Attaches overseas, and the need for collaboration to ensure mutual success are commonalities and point to increasing interagency cooperation.

Acknowledged Change in the Threat Environment

Mr. Larry Mefford, Assistant Director of the FBI for Counterterrorism, stated that the threat environment and an understanding of this threat by senior government leaders is the single

most important factor guiding the reorganization.²⁶ Prior to 9/11, the U.S. government was not efficiently organized to confront terrorism and terrorism was not the clear priority because the threat it posed was under appreciated. After 9/11, preventing another attack on the homeland is the clear priority, which has impacted the level of resources, investigative authorities, and degree of coordination across the government. Terrorism has become a national problem as opposed to an FBI or CIA problem. This under appreciation of the threat and the mismatch of means to ends is noted by Director Freeh in his testimony to the Joint Inquiry when he cited a National Commission on Terrorism report which questioned the effectiveness of the law enforcement approach as opposed to a fuller response.²⁷ The final report of the Joint Inquiry echoes this sentiment as the FBI is credited with numerous successful prosecutions but “law enforcement efforts were not adequate by themselves to target or eliminate Bin Laden’s sanctuary. While the United States persisted in observing the rule of law and accepted norms of international behavior, Bin Laden and al-Qa’ida recognized no rules and thrived in the safe haven provided by Afghanistan”.²⁸ The continuing reorganization of the FBI is and was in response to the threat that confronts the nation.

Congressional Oversight

On February 28, 2002 Senator Leahy introduced the FBI Reform Act of 2002. This act was developed from lessons learned over several months of Judiciary Committee hearings on the FBI. When introducing the bill, Senator Leahy acknowledged that the FBI had a long history of outstanding performance as a law enforcement organization, but changes had to be made due to a string of problems and the continuing threat of additional attacks. Senator Leahy also stated that the independence Congress had sometimes afforded the FBI would have to end as the nation’s reliance on the FBI to thwart terror attacks, the FBI’s increased powers under the Patriot Act, and

increased FBI budgets all required active oversight from Congress. A broad range of reforms were required by the act to establish greater accountability, eliminate disparity in disciplinary actions, tighten internal security, protect whistleblowers, actively oversee the FBI's technology upgrade efforts, and end the FBI's use of its own Inspector General.²⁹

On June 21, 2002 David Walker, the Comptroller General of the United States, testified before a joint committee of the House of Representatives regarding the FBI reorganization. Mr. Walker described the two phases of the FBI reorganization that had occurred since 9/11. The first, which was announced in December of 2001, reordered FBI executive management by creating four Executive Assistant Director positions and created Security and Records Management Divisions. This first phase of reorganization sought to reduce the span of control of senior management to enhance accountability and initiate an integrated security system to better protect and account for bureau information. The second phase of the reorganization, announced on May 29, 2002, was intended to best position the FBI for its continued counterterrorism efforts by realigning resources from traditional criminal investigations to counterterrorism and counterintelligence, building analytic capacity, and hiring personnel to fill critical skill gaps. Mr. Walker also identified the need for significant communications and information technology upgrades.³⁰

In the Committee's request for testimony, it also asked that the General Accounting Office (GAO) identify areas in the reorganization that could require additional review and oversight. Mr. Walker reported that several areas, including progress in strategic planning, human capital planning, FBI expenditures of appropriated funds to investigate terrorism, performance appraisals, implementation of the Attorney General Guidelines, and information technology improvements are all areas in which scrutiny from Congress and the GAO is warranted.³¹

The U.S. system of shared powers between the different branches of government and the checks and balances characteristic of this system are clearly demonstrated on many levels in the Congressional oversight of the FBI. While an organization like the FBI seeks greater investigative powers, resources, and autonomy, Congress has the authority to oversee the use of these powers and resources, mandating changes it deems necessary. For the FBI, failing to comply with Congressional mandates and directives is not an option. The Recommendations of the Joint Inquiry on 9/11 includes a specific call for Congress, in consultation with the Administration, to determine if the FBI should retain the counterterrorism and counterintelligence functions for the U.S. or if a new agency is needed.³² In crafting the FBI reorganization, Director Mueller has little latitude in responding to inputs from Congress.

Conclusion

When Director Mueller took charge of the FBI only one week before 9/11, he already had a sense of what reforms were needed at the FBI through a review of assessments completed by senior FBI executives and outside commissions. The work done by Director Freeh and DD Bryant as well as the continuing efforts of AD Watson contributed significantly to Director Mueller's understanding of the problems. Comptroller Walker, in his previously described testimony, stated that the reorganization was not "unexpected and is, in fact, consistent with the FBI's 1998 Strategic Plan."³³ The Webster Commission, in addition to its security recommendations, touched on the cultural gap between criminal and national security agents in the bureau, and the need to provide adequate resources and emphasis to the national security programs. After 9/11, these reforms became part of a much broader reorganization, which now included increased oversight from Congress as manifested by the FBI Reform Act and increased

interaction with the CIA. Most importantly, the continually evolving threat and the government's understanding of that threat will dictate how the FBI organizes and how resources are used.

What can be discerned from a recounting of the input Director Mueller drew upon in the FBI reorganization? First, the interplay of people, organizations and process is always present. The FBI reorganization plan is not the handiwork of one person, even a no nonsense, proven reformer like Director Mueller. Neither is it the product of one agency, or even one branch of government. Such an effort is the complex commingling of points of views, experience, insights, and priorities from scores of people, both in and out of government, organizations, and processes, which are forged into a plan of action, which is itself subject to constant revision.³⁴ In testimony before Congress, Director Mueller acknowledged this concept when he reported that the reorganization was the product of “substantive comments, directions, and guidance culled from Congressional Appropriations and Intelligence Committees reports as well as various Administration and Congressionally-directed reports published since 1996”.³⁵

Organizational cultures and routines are held close and change very gradually.³⁶ The senior leaders of the FBI and outside experts recognized the need for change. Steps were taken and recommendations made towards reform, but the deficiencies noted required a new way of thinking in addition to a new organizational structure and enhanced technologies. To the extent that the FBI had an intelligence culture by virtue of its foreign counterintelligence responsibilities, this culture was in conflict with and often of lesser stature than the law enforcement one.³⁷

The dispersion of power between the branches of government ensures debate over different views and contributes to accountability. Congress exercises the power of the purse and the FBI will need significant funding to complete its reorganization. Accordingly, Congress will support

Director Mueller to the extent that the reorganization efforts take into account the recommendations made by the several organizations that contribute to the oversight process, and that these recommendations are not installed without mechanisms to hold the FBI and its employees accountable.

Most importantly, without an accurate understanding of the threat at the most senior levels of government, setting clear priorities and making resource decisions are difficult tasks as several agencies compete for resources. The FBI reorganization is an evolutionary process that will continue to adjust to the threat. This reorganization is and will be the work of many hands.

Notes

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² "Mueller, Ashcroft Announce FBI Reorganization." The United States Mission to the European Union. 29 May 2002. <http://www.useu.be/Terrorism/USResponse/May2902MuellerAshcroftFBI.html> (17 December 2002).

³ "Statement for the Record, Louis J. Freeh, Director Federal Bureau of Investigation." Congressional Statement, Federal Bureau of Investigation. 24 March 1999. <http://www.fbi.gov/congress/congress99/freeh324.htm> (30 December 2002).

⁴ "Statement for the Record, Louis J. Freeh, Former FBI Director." Joint Inquiry into the Events of September 11, 2001. 8 October 2002. <http://intelligence.senate.gov/0210hrg/021008/freeh.pdf> (October 2002).

⁵ "Statement for the Record, Louis J. Freeh, Director Federal Bureau of Investigation." Congressional Statement, Federal Bureau of Investigation. 24 March 1999. <http://www.fbi.gov/congress/congress99/freeh324.htm> (30 December 2002).

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¹² Ibid

¹³ Ibid

¹⁴ “Statement for the Record, Michael E. Rolince, Special Agent in Charge, Washington Field Office,” Joint Inquiry into the Events of September 11, 2001, 20 September 2002,

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¹⁵ “Attorney General Guidelines,” Remarks of Attorney General John Ashcroft, 30 May 2002, <http://www.usdoj.gov/ag/speeches/2002/53002agpreparedremarks.htm> (2 January 2003).

¹⁶ “Statement for the Record of Robert S. Mueller III, Director, Federal Bureau of Investigation,” Fiscal Year 2003 Budget Request, 6 March 2002, <http://www.fbi.gov/congress/congress02/03-06-02.htm> (17 December 2002).

¹⁷ Senator Patrick Leahy, “Reforming the FBI in the 21st Century: The Lessons of the Hanssen Espionage Case,” United States Senate Committee on the Judiciary, 9 April 2002, http://www.fas.org/irp/congress/2002_hr/040902leahy.html (9 January 2003).

¹⁸ “The Webster Commission Report: A Review of FBI Security Programs-Introduction,” The Center for Counterintelligence and Security Studies, http://www.cicentre.com/Documents/Doc_Webster%20Report%20Introduction.htm (9 January 2003).

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²⁰ “Statement for the Record of Dale L. Watson, Executive Assistant Director, Counterterrorism and Counterintelligence, Federal Bureau of Investigation,” Joint Inquiry into the Events of September 11, 2001, 26 September 2002, <http://www.fbi.gov/congress/congress02/watson/watson092602.htm> (December 2002).

²¹ Larry Mefford, Assistant Director, FBI interviewed by Arthur Zarone on 14 January 2003 at Washington D.C.

²² Riebling, Mark. Wedge: The Secret War Between the FBI and CIA. (New York: Knopf, 1994), 49.

²³ “Statement for the Record of Dale L. Watson, Executive Assistant Director, Counterterrorism and Counterintelligence, Federal Bureau of Investigation,” Joint Inquiry into the Events of September 11, 2001, 26 September 2002, <http://www.fbi.gov/congress/congress02/watson/watson092602.htm> (December 2002).

²⁴ Attorney General John Ashcroft, “Remarks on FBI Reorganization,” 29 May 2002, <http://www.usdoj.gov/ag/speeches/2002/052902agtranscriptsredesigningfbi.htm> (2 January 2003).

²⁵Deborah Charles, "FBI Announces Steps to Boost Terrorism Prevention," Yahoo News Canada, 29 May 2002, <http://ca.news.yahoo.com/020529/5/mpof.html> (13 December 2002).

²⁶ Larry Mefford, Assistant Director, FBI interviewed by Arthur Zarone on 14 January 2003 at Washington D.C

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²⁸ "Final Report: Part 1 Findings and Conclusions," Joint Inquiry into the Events of September 11, 2001, 10 December 2002, <http://intelligence.senate.gov/findings.pdf> (11 December 2002).

²⁹ Senator Patrick Leahy, "Statements on Introduced Bills and Joint Resolutions," Congressional Record, 28 February 2002, http://www.fas.org/irp/congress/2002_cr/s1974.html (3 January 2003).

³⁰ David Walker, "FBI Reorganization: Initial Steps Encouraging but Broad Transformation Needed," United States General Accounting Office, 21 June 2002, <http://www.gao.gov/news.items/d02865t.pdf> (3 January 2003).

³¹ Ibid

³² "Final Report: Recommendations," Joint Inquiry into the Events of September 11, 2001, 10 December 2002, <http://intelligence.senate.gov/recommendations.pdf> (11 December 2002).

³³ David Walker, "FBI Reorganization: Initial Steps Encouraging but Broad Transformation Needed," United States General Accounting Office, 21 June 2002, <http://www.gao.gov/news.items/d02865t.pdf> (3 January 2003).

³⁴ Dr. Charles A. Stevenson, "People, Organizations, and Processes," National War College, 15 November 2001, <http://ndunet.ndu.edu/NWC/Core/5603SYL/handouts/02People%20Organizations%20&%20the%20Process.ppt> (December 2002).

³⁵ "Statement for the Record of Robert S. Mueller III, Director, Federal Bureau of Investigation," Fiscal Year 2003 Budget Request, 6 March 2002, <http://www.fbi.gov/congress/congress02/03-06-02.htm> (17 December 2002).

³⁶ James Q. Wilson, Bureaucracy (New York: Basic Books, 1989), 91

³⁷ Wilson, 92.

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